No. 17-532

IN THE

Supreme Court of the United States

CLAYVIN B. HERRERA,

Petitioner,

v.

STATE OF WYOMING,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF WYOMING, SHERIDAN COUNTY

BRIEF OF *AMICUS CURIAE* SAFARI CLUB INTERNATIONAL IN SUPPORT OF RESPONDENT

ANNA M. SEIDMAN
Counsel of Record
DOUGLAS S. BURDIN
JEREMY E. CLARE
SAFARI CLUB INTERNATIONAL
501 Second Street, NE
Washington, DC 20002
(202) 543-8733
aseidman@safariclub.org

Counsel for Amicus Curiae

November 20, 2018

284805

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF APPENDICES ii

TABLE OF CITED AUTHORITIES iii

INTEREST OF *AMICUS CURIAE* 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 3

A. Unregulated off-reservation hunting by Crow Tribe members will undermine and jeopardize Wyoming's management and conservation of its wildlife 3

B. The conservation necessity doctrine inadequately protects the states' interests in wildlife management 11

CONCLUSION 22

TABLE OF APPENDICES

Page

APPENDIX A — JOINT ACTION RESOLUTION OF THE CROW TRIBE TO ENACT AND DECLARE OFFICIAL CROW TRIBAL POLICY OF FULLY EXERCISING OFF-RESERVATION HUNTING RIGHTS PURSUANT TO THE 1868 FORT LARAMIE TREATY, MAY 7, 2013 CROW TRIBAL LEGISLATURE, JAR NO. 13-09, (FROM *WYOMING V. HERRERA*, RECORD ON APPEAL, CT 2014-2687; 2688) 1a

APPENDIX B — CROW RESERVATION FISH & GAME CODE, 2005, CROW LAW AND ORDER CODE, TITLE 12 (FROM *WYOMING V. HERRERA*, RECORD ON APPEAL, CT 2014-2687; 2688) (SELECTED EXCERPTS) 10a

TABLE OF CITED AUTHORITIES

Page

CASES

All. for the Wild Rockies v. U.S. Dep't of Agric.,
772 F.3d 592 (9th Cir. 2014) 4

Antoine v. Washington,
420 U.S. 194 (1975) 13, 15

Balt. Gas & Electric Co. v.
Natural Res. Defense Council, Inc.,
462 U.S. 87 (1983) 15

Joe Johnson Co. v. Wyo. State Bd. of Control,
857 P.2d 312 (Wyo. 1993) 15

Kleppe v. Sierra Club,
427 U.S. 390 (1976) 15

Laramie Range Found. v.
Converse Cty. Bd. of Cty. Comm'rs,
290 P.3d 1063 (Wyo. 2012) 14

Minnesota v.
Mille Lacs Band of Chippewa Indians,
526 U.S. 172 (1999) 6, 12, 20

New York City Friends of Ferrets v.
City of New York,
876 F. Supp. 529 (S.D.N.Y. 1995), *aff'd*,
71 F.3d 405 (2d Cir. 1995) 13

Cited Authorities

Page

Pfeil v. Amax Coal W., Inc.,
908 P.2d 956 (Wyo. 1995).....18

Puyallup Tribe v. Dep't of Game of Wash.,
391 U.S. 392 (1968).....13

Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n,
443 U.S. 658 (1979), *modified sub nom. Washington v. United States*,
444 U.S. 816 (1979).....13

Wisconsin v. Matthews,
248 Wis. 2d 78 (Wis. App. 2001).....20

STATUTES AND OTHER AUTHORITIES

16 U.S.C. §§ 703-712 4

16 U.S.C. §§ 1531-1544 5

16 U.S.C. § 1531(a)(5).....6

36 C.F.R. § 2.2 8

IRC § 501(c)(4) 1

Martha G. Vázquez, *Clipping the Wings of Industry: Uncertainty in Interpretation and Enforcement of the Migratory Bird Treaty Act*,
74 WASH. & LEE L. REV. ONLINE 281 (2018) 5

Cited Authorities

Page

Sup. Ct. R. 37 1

Sup. Ct. R. 37(1) 1

WYO. ADMIN. CODE, WYO. GAME AND FISH COMM'N, HUNTING, Ch. 2 § 5 20

WYO. ADMIN. CODE, WYO. GAME AND FISH COMM'N, HUNTING, Ch. 2 § 8 20

WYO. ADMIN. CODE, WYO. GAME AND FISH COMM'N, HUNTING, Ch. 2 § 12 20

WYO. ADMIN. CODE, WYO. GAME AND FISH COMM'N, HUNTING, Ch. 2 § 15 20

WYO. ADMIN. CODE, WYO. GAME AND FISH COMM'N, HUNTING, Ch. 2 § 16 20

WYO. ADMIN. CODE, WYO. GAME AND FISH COMM'N, HUNTING, Ch. 2 § 17 20

WYO. CONST. art. I, § 39 16

WYO. STAT. ANN. § 16-3-102 18

WYO. STAT. ANN. § 16-3-103 ..... 14, 18

WYO. STAT. ANN. § 16-3-114(a) 14, 18

Cited Authorities

Page

WYO. STAT. ANN. § 23-1-103 14

WYO. STAT. ANN. § 23-1-302 17

WYO. STAT. ANN. § 23-1-303 17

WYO. STAT. ANN. § 23-1-303(e) 18

INTEREST OF *AMICUS CURIAE*[1]

Safari Club International's ("Safari Club") missions are the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool. Safari Club carries out its conservation mission in part through its sister organization, Safari Club International Foundation. Safari Club is a nonprofit corporation incorporated in the State of Arizona, operating under § 501(c)(4) of the Internal Revenue Code, with principal offices and places of business in Washington, D.C. and Tucson, Arizona and a membership of approximately 50,000.

Safari Club has long been involved in litigation and other advocacy efforts to promote hunting, access to hunting, and sustainable-use conservation, including hunting opportunities on federal and other lands in Wyoming, Montana, and numerous other states. Many of Safari Club's members hunt in Wyoming (including in Bighorn National Forest), Montana, and other states potentially affected by treaties such as at issue here.

In this amicus brief, Safari Club will "bring[] to the attention of the Court relevant matter not already brought to its attention by the parties." Sup. Ct. R. 37(1). This brief

---

1. The following is provided pursuant to Supreme Court Rule 37. No counsel for a party authored this brief in whole or in part, and no counsel for a party and no party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than named *amicus curiae* made a monetary contribution to this brief. Counsel of Record for Petitioner and for Respondent consented to the filing of *amicus curiae* briefs in support of either or neither party.

provides information that will "be of considerable help to the Court." *Id.* Safari Club will address (1) the impacts of ruling in favor of Petitioner Clayvin Herrera ("Herrera"), including interfering with Wyoming's and other states' abilities to effectively and fairly regulate the harvest of game animals and with individual hunters' abilities to participate in sustainable-use conservation through hunting; and (2) why the "conservation necessity" doctrine, while potentially a useful fallback, (a) is inadequate to ensure that the exercise of hunting privileges carried out under authority of the Crow Tribe's 1868 Fort Laramie Treaty ("1868 Treaty") and other treaties with similar language does not interfere with state management of game animals and (b) removes decision-making concerning wildlife management from the branch of the government with the requisite expertise to make such decisions.

SUMMARY OF THE ARGUMENT

Confirming Herrera's alleged treaty right to hunt outside the boundaries of the Crow Tribe reservation will undermine Wyoming's management of its wildlife. A ruling in favor of Herrera's interpretation of the 1868 Treaty could be expansive in terms of both species hunted and lands on which they are hunted. The 1868 Treaty language expresses a dangerous view of wildlife management out of sync with modern practices. Herrera's asserted right to engage in unregulated hunting practices outside the boundaries of Crow Tribe reservation lands also would arguably conflict with the Crow Tribe's own approach to wildlife management. The Court should keep these concerns in mind as it determines whether these treaty hunting privileges should exist.

The "conservation necessity" doctrine, relied on by Herrera and several amici who support him, does not adequately address concerns about interference with Wyoming's management of its wildlife. Reliance on this doctrine would place ultimate wildlife management decisions in the hands of trial court judges who are not expert on the subject. This approach, which places the burden of proof on the state, contradicts the deference the courts normally would accord the state's decision-making and usurps Wyoming's authority over its wildlife. It also undermines the public process through which Wyoming establishes it wildlife regulations. The level of details found in the state's wildlife regulations highlights the difficulty of having those regulations subject to a *post hoc* review by a court. Finally, the narrow focus on "***conservation*** necessity" ignores other reasons, such as public safety and welfare, for the state's regulation of hunting.[2]

ARGUMENT

A. Unregulated off-reservation hunting by Crow Tribe members will undermine and jeopardize Wyoming's management and conservation of its wildlife.

Confirming Herrera's alleged treaty right to hunt outside the boundaries of the Crow Tribe reservation will undermine Wyoming's management of wildlife as that broad right could apply anywhere on federal and state lands within the reach of the treaty and on which hunting is allowed. The expansive language of the 1868 Treaty, and any treaty with similar language, heightens this concern. The 1868 Treaty expresses a strategy for the

2. Safari Club also generally agrees with and supports the arguments presented by Respondent State of Wyoming in its brief.

utilization of game that is the antithesis of the current-day approach to wildlife management and conservation. The treaty gives members of the Crow Tribe the "right to hunt on the unoccupied lands of the United States ***so long as game may be found thereon*** . . . ." Pet.App.5a (emphasis added). In effect, the 1868 Treaty on its face gives tribal members unfettered ability to hunt game on unoccupied lands until the game is depleted. It expresses a dangerous management approach (or maybe more accurately, a lack of an approach) that the state and federal governments have long abandoned.

At the time of the signing of the 1868 Treaty, states and the federal government had not yet corrected this approach to wildlife management, which could and did lead to virtual losses of complete populations of game. In the 19th century, unregulated take of wildlife contributed to near catastrophic population losses of numerous wildlife species. *See, e.g., All. for the Wild Rockies v. U.S. Dep't of Agric.*, 772 F.3d 592, 594 (9th Cir. 2014) (discussion of grizzly bear population reductions). In the 20th century, both federal and state legislatures abandoned the "so long as game may be found thereon" approach. In its place, they adopted management strategies designed to maintain healthy wildlife populations and prevent species decline.

Two examples highlight this fact, one from 100 years ago and one from 45 years ago. In the early 20th century, the United States signed treaties with other countries to protect the migratory birds they shared. *See* U.S. Fish and Wildlife Service, Bird Conservation Timeline, Important Dates in the Conservation of Migratory Birds ("Bird Timeline") (noting 1916 treaty with Great Britain (on behalf of Canada); 1918 adoption of the Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712, which implemented

the treaty; and similar treaties with Mexico and Japan).[3] The Bird Timeline explains that "[i]n the 1800s millions of birds were killed for food, feathers, and science – hats, market hunting, and scientific collecting. Overuse of natural resources was the norm."); *see also* Martha G. Vázquez, *Clipping the Wings of Industry: Uncertainty in Interpretation and Enforcement of the Migratory Bird Treaty Act*, 74 WASH. & LEE L. REV. ONLINE 281, 282–83 (2018) ("Conservationists and lawmakers at the turn of the century realized that even the most prolific of birds could be wiped out by overhunting and exploitation, and a movement quickly grew to 'save interesting species from possible extinction.' This movement culminated in the passing of the Migratory Bird Treaty Act (MBTA).").

In 1973, Congress passed the Endangered Species Act, 16 U.S.C. § 1531-1544 ("ESA"). The ESA provides the U.S. Fish and Wildlife Service and the states with authority to protect species that have declined to the point that they need special protections. Although the ESA authorizes administrative action solely with respect to species qualifying for federal protection, Congress also admonished that the law's purpose is to encourage conservation of all species, finding and declaring that:

> encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments ***and to better safeguarding, for***

3. https://www.fws.gov/birds/about-us/timeline.php (last visited November 19, 2018).

> ***the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.***

16 U.S.C. § 1531(a)(5) (emphasis added).

The 1868 Treaty, in contrast, established disappearance of game as its floor. This cannot be the standard by which any user, tribal or non-tribal, approaches the use of wildlife today. Modern wildlife managers recognize that wildlife resources are finite and the disappearance of any particular game species or population of a species harms everyone—the tribal members who want to hunt those species; the other species of wildlife that prey on those game species or that benefit from those game species' presence in the ecosystem; the non-tribal hunters who rely on those species for food, revenue and recreation; and the non-hunters who enjoy wildlife-viewing.[4]

This Court should reject any interpretation of the 1868 Treaty that would allow tribal members to completely disregard and undermine wildlife management programs designed to conserve game and other wildlife species that state and federal governments are successfully implementing to maintain healthy wildlife populations to the benefit of all those who utilize and otherwise enjoy them.

---

4. The treaty considered by this Court in *Minnesota v. Mille Lacs Band of Chippewa Indians* is distinguishable because it did not provide tribal members with the privilege to hunt to the complete exhaustion of the wildlife. Instead, the treaty at issue provided "'[t]he privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guarantied *[sic]* to the Indians, during the pleasure of the President of the United States.' 1837 Treaty with the Chippewa, 7 Stat. 537." *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 177 (1999) ([sic] in original).

In addition, the expansive right suggested by the 1868 Treaty's "so long as game may be found thereon" approach would arguably apply well beyond Herrera's take of elk in Bighorn National Forest. If this Court upheld the 1868 Treaty as advocated by Herrera, the ruling would facilitate unregulated take of numerous species on numerous types of lands.

For example, although Herrera's conviction arose from the taking of elk, the implications of this Court's decision to uphold the privileges of the 1868 Treaty would presumably apply to any wildlife species that all members of the Crow Tribe could attempt to hunt under protection of the 1868 Treaty. In a "Joint Action Resolution of the Crow Tribe to Enact and Declare Official Crow Tribal Policy of Fully Exercising Off-Reservation Hunting Rights Pursuant to the 1868 Fort Laramie Treaty" ("Joint Action Resolution"), the Crow Tribe's Executive Branch and Legislature declared that they defined the off-treaty hunting privileges provided in the 1868 Treaty to apply to "all native species of animals found in the traditional Crow homeland" and that the species would include but not be limited to "buffalo, elk, mule deer, white-tailed deer, black bear, grizzly bear, big horn sheep, shiras moose, grey wolves, pronghorn antelope, mountain lion, bobcat, wolverine, badger, beaver, sharp-tailed grouse, ruffed grouse, sage grouse, blue or dusky grouse, prairie chicken, wild turkey, waterfowl, birds of prey, and all fur-bearing animals." *Wyoming v. Herrera*, Record on Appeal, CT 2014-2687; 2688 at 352, 354, SCI.App.1a, 6a.[5]

---

5. The Appendix provided by Safari Club contains the pertinent pages of the Joint Action Resolution and those portions of the Crow Reservation Fish and Game Code to which Safari Club cites in this brief

This Court's ruling will also not apply exclusively to the Bighorn National Forest, where Herrera hunted elk in violation of Wyoming's regulations, but could potentially extend to all lands that the Crow Tribe considers to be covered by the 1868 Treaty. In the Joint Action Resolution, the Crow Tribe's Executive Branch and Legislature identified those lands as "all federal lands managed by the United States Forest Service as national forests and national grasslands, all federal lands managed by the National Park Service as national parks and national recreation areas, all federal lands managed by the United States Fish and Wildlife Service as national wildlife refuges, and all federal lands managed by the Bureau of Land Management as national monuments, national recreations areas, and all such other BLM lands managed for multiple-use or resource preservation, and all federal lands managed by the Army Corps of Engineers and Bureau of Reclamation." The Joint Action Resolution indicated that the Crow Tribe would honor any special designation by the U.S. Congress under statutes designating federal lands as off-limits to hunting. *Id.* at 354, SCI.App.5a.[6]

---

6. One unanswered question is how this acknowledgement would apply to National Park Service lands whose enabling statute contains no specific prohibition against hunting. Arguably, for these National Parks, Congress has made no designation "under statute" for the lands to be "off-limits to hunting." Nevertheless, the National Park Service has adopted regulations that prohibit hunting on any National Park where Congress has either specifically prohibited hunting or where Congress has remained silent on the subject. 36 C.F.R. § 2.2. A strict reading of the Joint Action Resolution suggests that the Crow Tribe would consider National Parks with no statutory hunting prohibition to be open to tribal hunting (in conflict with the NPS regulation).

While the Crow Tribe manages the wildlife that occupy the lands within the boundaries of the Tribe's reservation, the Tribe does not currently apply those conservation strategies to wildlife outside reservation boundaries. The Crow Reservation Fish and Game Code ("Code"), Title 12 of the Crow Law and Order Code, demonstrates that the Crow Tribe's management of hunting within reservation boundaries is conservation-motivated. For example, the Code describes the Tribe's Conservation Policy as follows:

> It shall be and is hereby established as the policy and intent of the Crow Tribal Fish and Game Commission, as established by the Crow Tribal Council, to provide an adequate and flexible system for the protection and conservation of all forests (whenever they are designated as wildlife habitat), fish and game resources ***within the Crow Indian Reservation***; to provide for the general management and supervision of all wildlife, fishery and outdoor recreational activities ***on the Crow Indian Reservation***, including but not limited to, the establishment of rules, regulations and ordinances ***relating to the harvest of Fish and Game on the Crow Indian Reservation***, the establishment of prohibited acts and penalties in regard to wildlife, fishery, and outdoor recreational activities ***on the Crow Indian Reservation***.

Code, 12-3-101, *Wyoming v. Herrera*, Record on Appeal, 591, 597, SCI.App.11a (emphasis added). The Code emphasizes that its regulations apply exclusively to the lands within the external boundaries of the Crow Tribe reservation:

> It is the policy of the Crow Tribal Council to exercise the inherent sovereignty of the Crow Indian Nation over all land and waters within the exterior boundaries of the Crow Indian Reservation. Henceforth all hunting and fishing within the exterior boundaries will be regulated by the Tribal Council through the Crow Tribal Fish and Game Commission as set forth in this title. Any previous resolution of the Tribal Council to the contrary is hereby rescinded.

Id., Code, 12-1-101 at 594, SCI.App.10a. The Code offers no similar policy or provisions applicable to conservation outside reservation boundaries. The Tribe did initiate action to adopt a set of harvest regulations applicable to off-reservation hunting. During their Special Joint Session, the Tribe's Executive Branch and Legislature included as part of their resolution the following intention:

> The Crow Tribe intends to enact regulations governing the exercise of all off-reservation treaty hunting conducted by Crow tribal members through an amendment to the Crow Fish and Game Code as contained in Title 12 of Crow Law and Order Code. Such regulations shall, at a minimum, include procedures for issuance of treaty licenses, the establishment of treaty-hunting seasons, harvest quotas, enforcement procedures including penalties for violations, inter-governmental agreements including cooperative habitat improvement projects, and other conservation-based regulatory measures.

Joint Action Resolution, *Wyoming v. Herrera*, Record on Appeal at 354, SCI.App.6a. Nothing in the Record on Appeal from the Wyoming state court demonstrates that the Crow Tribe ever amended their Fish and Game Code, as expressed in the Joint Action Resolution, to promulgate regulations for tribal hunting on lands outside of the reservation. Consequently, although the Crow Tribe recognizes and observes the need for conservation-based management of wildlife harvesting, it has not taken the steps to regulate its members' hunting practices outside of reservation boundaries.

The asserted treaty right is broad in both species and lands covered. The language of the 1868 Treaty suggests an outdated and destructive management standard. Exercise of the hunting activities under Herrera's view of the treaty would undermine Wyoming's efforts to sustainably manage its wildlife for all residents and visitors to the State. It also would arguably conflict with the Crow Tribe's own approach to wildlife management. The Court should keep these concerns in mind as it determines whether the treaty hunting privileges should continue in the manner suggested by Herrera and the amici who support him.

B. The conservation necessity doctrine inadequately protects the states' interests in wildlife management.

The "conservation necessity" doctrine, which Herrera and several amici have raised,[7] is an inadequate vehicle to

7. *See, e.g.*, Herrera Br. at 44–45; U.S. Br. at 18–19, 29 n.4; Natural Resources Law Professors Br. at 23; Crow Tribe Br. at 33; Shoshone-Bannock Tribes Br. at 17; Indian Law Professors

address Wyoming's (and other affected states') ability to properly manage its wildlife in the face of hunting under the 1868 Treaty (and similar treaties).[8]

Herrera and the amici that support his arguments assert two related reasons why the "conservation necessity" doctrine is relevant to this case. First, Herrera attempts to use the doctrine to reassure the Court that ruling in Herrera's favor will not have an adverse impact on Wyoming's management of its wildlife. Herrera Br. at 44–45. Second, amici argue that the conservation necessity doctrine helps reconcile treaty rights with state sovereignty over wildlife, so "statehood by itself is insufficient to extinguish Indian treaty rights to hunt, fish, and gather . . . ." National Congress of American Indians Br. at 19–21, *quoting Mille Lacs Band of Chippewa Indians*, 526 U.S. at 205; *see also* U.S. Br. at 18–19 (discussing reconciling treaty rights with state sovereignty over natural resources). Neither argument is persuasive because the doctrine cannot substitute for (and will undermine) the State's science-based decision-making on wildlife management.

This Court has developed and described the conservation necessity doctrine over the years. "[W]e see no reason why the right of the Indians may not also

---

Br. at 11–12 n.2.

8. The conservation necessity doctrine is not an issue directly on appeal in this case. *See* Herrera Br. at 17 n.10; U.S. Br. at 7; *see also* Wyoming Br. at 62 (noting the United States' suggestion that the parties return to the state courts to litigate this issue). Because several briefs have discussed it in detail, Safari Club addresses it here.

be regulated by an appropriate exercise of the police power of the State. . . . But the manner of fishing, the size of the take, the restriction of commercial fishing, and the like may be regulated by the State in the interest of conservation, provided the regulation meets appropriate standards and does not discriminate against the Indians." *Puyallup Tribe v. Dep't of Game of Wash.*, 391 U.S. 392, 398 (1968). "The 'appropriate standards' requirement means that the State must demonstrate that its regulation is a reasonable and necessary conservation measure, . . . and that its application to the Indians is necessary in the interest of conservation." *Antoine v. Washington*, 420 U.S. 194, 207 (1975) (citations omitted). The Court seemed to adopt a strict view. *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 682 (1979), *modified sub nom. Washington v. United States*, 444 U.S. 816 (1979) ("[T]reaty fishermen are ***immune from all regulation*** save that required for conservation.") (emphasis added). The burden of proof is on the state. *Antoine*, 420 U.S. at 207.

While the doctrine potentially provides an important check on unregulated harvest under treaty rights, for several reasons it is an inadequate vehicle to address fully this concern.

First, application of the conservation necessity doctrine will place ultimate responsibility for the State's wildlife management in the courts. Trial courts are not well-equipped to determine the "conservation necessity" of a focused aspect of a comprehensive wildlife management scheme. *See New York City Friends of Ferrets v. City of New York*, 876 F. Supp. 529, 540 (S.D.N.Y. 1995) (in case involving regulation of domestication of a wild animal,

"courts are . . . ill-advised and ill-equipped to intrude upon the legislative and agency decisionmaking process . . . ."), *aff'd*, 71 F.3d 405 (2d Cir. 1995). Courts are qualified to review agency decision-making on wildlife issues under a deferential standard of review. *See* WYO. STAT. ANN. § 16-3-114(a); *Laramie Range Found. v. Converse Cty. Bd. of Cty. Comm'rs*, 290 P.3d 1063, 1070 (Wyo. 2012) (court defers to administrative agency when agency makes a factual finding). But weighing the scientific necessity of particular hunting (and fishing) regulations and reaching a decision is a legislative/executive function more than a judicial one.

For example, the United States suggests that the conservation necessity doctrine calls for a narrow review of whether the regulation at issue (here, the 2014 elk hunting season and harvest limits) is necessary in the interest of conservation. U.S. Br. at 29 n.4. The problem is that the State manages wildlife and the harvest of game animals with all species and uses in mind, not in isolation and focused on any one species. *See* WYO. STAT. ANN. § 23-1-103 ("For the purpose of [1939 Wyo. Sess. Laws 83-116], all wildlife in Wyoming is the property of the state. It is the purpose of this act and the policy of the state to provide an adequate and flexible system for control, propagation, management, protection and regulation of ***all Wyoming wildlife***.") (emphasis added).

One amicus has already suggested that "[n]o such conservation necessity exists here; elk populations in Bighorn National Forest are actually higher than the desired management goal." Natural Resources Professors Br. at 23. Resolution of this issue in the courts could lead to simplistic, unsupported assertions like that made by

the Natural Resources Professors.[9] Although, in isolation, regulating the illegal take of four elk may not appear necessary for the conservation of the species, when all harvest and other mortality causes are considered, as they must be, the necessity of regulating any single take becomes crucial.

Second, placing the burden on the state agency to prove that its regulations on seasons, take methods, bag limits, etc. are necessary for the conservation of the species conflicts with the usual deference that the courts accord administrative agency decision-making, especially in areas that require technical and scientific expertise. *Antoine*, 420 U.S. at 207 (burden of showing necessity on state); Crow Tribe Br. at 33 (discussing cases); *Joe Johnson Co. v. Wyo. State Bd. of Control*, 857 P.2d 312, 314 (Wyo. 1993) (deferring to agency's "specialized knowledge and expertise," particularly where agency's actions "involve an area of such technical complexity"); *Kleppe v. Sierra Club*, 427 U.S. 390, 412 (1976) (because analysis of the relevant factors "requires a high level of technical expertise," court must defer to "the informed discretion of the responsible federal agencies"); *Balt. Gas & Electric Co. v. Natural Res. Defense Council, Inc.*, 462 U.S. 87, 103 (1983) ("When examining this kind of scientific determination . . . a reviewing court must generally be at its most deferential.").

---

9. Another amicus similarly concluded that Wyoming has "not established 'that applying the ban on out-of-season hunting of [elk] by the Indians on the land in question is in any way necessary or even useful for the conservation of [elk].'" National Congress of American Indians Br. at 20, *quoting Antoine*, 420 U.S. at 207. The species at issue in *Antoine* was deer, but National Congress amici assert that the same conclusion applies to the elk at issue here.

Third, subjecting hunting regulations to a trial court determination of "conservation necessity" usurps the broad authority and obligation Wyoming law places on its wildlife management authorities. Wyoming's constitution expresses the duty of the state to manage and conserve its wildlife for all its people. An amendment to the constitution, approved by resolution and ratified by a vote in November of 2012 states:

> The opportunity to fish, hunt and trap wildlife is a heritage that shall forever be preserved to the individual citizens of the state, subject to regulation as prescribed by law, and does not create a right to trespass on private property, diminish other private rights or alter the duty of the state to manage wildlife.

WYO. CONST. art. I, § 39. Wyoming law gives to the Fish and Game Commission multiple responsibilities for managing the state's wildlife:

> (a) The commission is directed and empowered:
>
> > (i) To fix season and bag limits, open, shorten or close seasons including providing for season extensions for hunters with disabilities as established by commission rules and regulation, on any species or sex of wildlife for any type of legal weapon, except predatory animals, predacious birds, protected animals, and protected birds, in any specified locality of Wyoming, and to give notice thereof;

> (ii) To establish zones and areas in which trophy game animals may be taken as game animals with a license or, with the exception of gray wolves, in the same manner as predatory animals without a license, giving proper regard to the livestock and game industries in those particular areas;

WYO. STAT. ANN. § 23-1-302. Wyoming law also gives the Commission power to close particular areas to hunting and fishing:

> (c) When any commission order closes any area of land, lake, or stream from hunting or fishing, a concise description of the area, lake, or stream closed shall be posted in the manner and place determined by the commission to be adequate notice of the closure.

Id. § 23-1-303. Instead of leaving the decision to the expertise of the state management authority, the conservation necessity doctrine puts a non-expert trial court judge in the position of second-guessing the expert fish and game decision-makers. The Court should avoid an interpretation of the law and facts that puts the lower courts in this position.

Fourth, subjecting the State's game management regulations and decisions to an evidentiary hearing to make these narrow findings would undermine the public process state game and fish agencies undergo to adopt their regulations. When the Wyoming Commission exercises this authority, it must do so "in accordance with

the provisions of the Wyoming Administrative Procedure Act," which includes public notice and comment. *Id.* § 23-1-303(e); *Id.* § 16-3-102; *Id.* § 16-3-103 (rulemaking requirements, including public notice and comment). In conflict with these requirements, the public would be excluded from the review under the conservation necessity doctrine in a trial court. Although agency rules and regulations are subject to judicial review, *see id.* § 16-3-114(a), the process involves the reviewing court to accord deference and place the burden of proof on the party challenging the regulation, a proceeding different than an evidentiary hearing with the burden on the state. *See Pfeil v. Amax Coal W., Inc.*, 908 P.2d 956, 962 (Wyo. 1995) ("The burden of proving a lack of substantial evidence rests upon the party attacking the agency's decision.").

Fifth, the level of detail found in the Wyoming fish and game regulations highlights the difficulty of having those regulations subject to a *post hoc* review for "conservation necessity" by a trial court judge based on an evidentiary record. The federal land unit at issue in this case, the Bighorn National Forest, has nine "Elk Hunt Areas" under state law.[10] Wyoming's Fish and Game Commission has adopted very specific regulations regarding elk hunting in the State, including unique regulations for each of the State's "Hunt Areas," which involve:

- season dates, age and gender restrictions, quotas, license requirements, and other limitations, Chapter 7, Elk Hunting Seasons, at 7–5 to -7;

- special archery seasons, *id.* at 7–20 to -21; and

10. The hunt areas are 34-41, 45. https://wgfd.wyo.gov/Regulations/Regulation-PDFs/REGULATIONS_CH7_MAP.pdf (last visited November 19, 2018).

- special early seasons for hunters with disabilities, *id.* at 7–21.[11]

The Commission has already weighed numerous factors and scientific and other data to arrive at the most appropriate harvest goals, seasons, methods of take, gender or age restrictions, and any other appropriate restrictions. If state wildlife managers must account for a future unknown level and manner of harvest by tribe members, they will face difficulties in formulating the appropriate regulations in the first instance.

The conservation necessity doctrine places an impossible burden on the states to provide evidence of conservation need despite being prevented from collecting much of the data essential to make scientific judgments about the need for regulation. For example, Crow Tribe members who harvest wildlife outside of the reservation would not be required to obtain hunting licenses, depriving the state of information about the number of hunters seeking game. Similarly, Crow Tribe hunters would not need to report their harvests to the state, making it impossible for state managers to calculate the number or sex of animals taken by tribal hunters during or out of the season. Unregulated hunting by tribal members means the loss of key data used by state managers to establish seasons, bag limits and other parameters for non-tribal hunters. Consequently, state management authorities must either overcompensate in regulating the use by non-tribal hunters or wait until the game species shows a significant decline to take action.

---

11. https://wgfd.wyo.gov/Regulations/Regulation-PDFs/REGULATIONS_CH7.pdf (last visited November 19, 2018).

Sixth, the State may have reasons unrelated to conservation of wildlife to regulate the manner and methods of take, such as public safety and welfare. For example, Wyoming has regulations about the times of the day hunters can hunt game animals. WYO. ADMIN. CODE, WYO. GAME AND FISH COMM'N, HUNTING, Ch. 2 § 5 ("Big game, trophy game and small game animals may only be taken from one-half (1/2) hour before sunrise to one-half (1/2) hour after sunset."); *see also id.* § 8 (emergency closures), § 12 (use of aircraft to spot game animals), §§ 15-17 (transportation of deer, elk, and moose within, out of, and into Wyoming because of concerns over chronic wasting disease). While these regulations involve wildlife, their purposes are not limited to conservation. Hunting hours relate to safety issues; use of aircraft relates to fair chase principles; transportation limitations relate to concerns about transmission of disease to domesticated animals. If treaty-right hunting implicates these issues, the interests of the State unrelated to conservation would not be accounted for by the trial court.

But the case law is not clear whether such concerns would fall under the conservation necessity doctrine. *Compare Mille Lacs Band of Chippewa Indians*, 536 U.S. at 205 (Court has "repeatedly reaffirmed state authority to impose reasonable and necessary nondiscriminatory regulations on Indian hunting, fishing, and gathering rights ***in the interest of conservation***.") (emphasis added) *with Wisconsin v. Matthews*, 248 Wis. 2d 78, 96 (Wis. App. 2001) ("We do not read the Court's language [concerning the conservation necessity doctrine] as excluding the possibility that regulation may be appropriate for other compelling reasons."). If the conservation necessity doctrine is limited to "conservation," as suggested by this

Court's decisions, these other important factors will not be considered by the trial court.

The conservation necessity doctrine forces the wrong kind of decision-making. The impact of the State's inability to fully manage wildlife through regulated take is inevitably borne by the wildlife and those who wish to use it. Those most likely to pay a price are the non-tribal hunters who abide by state regulations but must absorb the unregulated tribal use in the form of less available game or over-aggressive state regulation designed to offset unreported tribal use.

For all these reasons, the Court should proceed with caution in relying on the conservation necessity doctrine to protect the State's paramount interest in the management and conservation of its wildlife.

CONCLUSION

The hunting practices memorialized in the 1868 Treaty do not reflect the approach that the U.S. government, the states, and even the Crow Tribe itself have utilized in the management and conservation of wildlife. To restore those unregulated harvest practices would undermine modern wildlife management and conservation that has reversed the damage inflicted by the type of "hunt so long as game may be found thereon" approach expressed in the treaty language and similar language of many other treaties signed over a century ago. The conservation necessity doctrine is not adequate to remedy the problems that would be caused by a ruling that would reinstate unregulated taking of this country's wildlife.

The Court should reject any ruling in this case that would restore such an approach to wildlife use or that relies on the conservation necessity doctrine to remedy the concerns. Safari Club asks this Court to affirm the rulings of the Wyoming state courts.

Respectfully submitted,

ANNA M. SEIDMAN
Counsel of Record
DOUGLAS S. BURDIN
JEREMY E. CLARE
SAFARI CLUB INTERNATIONAL
501 Second Street, NE
Washington, DC 20002
(202) 543-8733
aseidman@safariclub.org

November 20, 2018

Counsel for Amicus Curiae

APPENDIX

APPENDIX A — JOINT ACTION RESOLUTION OF THE CROW TRIBE TO ENACT AND DECLARE OFFICIAL CROW TRIBAL POLICY OF FULLY EXERCISING OFF-RESERVATION HUNTING RIGHTS PURSUANT TO THE 1868 FORT LARAMIE TREATY, MAY 7, 2013 CROW TRIBAL LEGISLATURE, JAR NO. 13-09, (FROM *WYOMING V. HERRERA*, RECORD ON APPEAL, CT 2014-2687; 2688)

MAY 7, 2013 CROW TRIBAL LEGISLATURE

JAR No. 13 -09

Introduced by Chairman Darrin Old Coyote
Crow Tribal Executive Branch

Co-Sponsored by Senator Conrad J. Stewart
Black Lodge District

A Joint Action Resolution Titled:

A JOINT ACTION RESOLUTION OF THE CROW TRIBE TO ENACT AND DECLARE OFFICIAL CROW TRIBAL POLICY OF FULLY EXERCISING OFF-RESERVATION HUNTING RIGHTS PURSUANT TO THE 1868 FORT LARAMIE TREATY

Legislative Findings:

WHEREAS, Article V, Section 2(a) of the Crow Tribal Constitution vests the Crow Tribal Legislature (hereinafter "Legislature") with the power and duty to

promulgate and adopt laws and resolutions in accordance with the Crow Tribal Constitution and federal law for the governance of the Crow Tribe; and

WHEREAS, Article IV, Section 4(a) of the Crow Tribal Constitution provides that the "general duties" of the Executive Branch Officials shall include the duty to implement all laws, resolutions and policies duly adopted by the Legislature; and

WHEREAS, the Crow Tribe has always valued hunting and gathering in Crow Country as an activity of the highest cultural importance and the means for survival; and

WHEREAS, the 1851 Fort Laramie Treaty, which is recorded in the United States session laws at 11 Statutes at Large 749, recognized in Article V that the territory of the Crow Nation is recognized as follows: "[C]ommencing at the mouth of Powder River on the Yellowstone; thence up Powder River to its source; thence along the main range of the Black Hills and Wind River Mountains to the head-waters of the Yellowstone River; thence down the Yellowstone River to the mouth of Twenty-five Yard Creek; thence to the head waters of the Muscle-shell River; thence down the Muscle-shell River to its mouth; thence to the head-waters of Big Dry Creek, and thence to its mouth;" and

WHEREAS, Article V of the 1851 Fort Laramie Treaty further provides that the Crow Tribe did not abandon or prejudice any rights or claims to any other

lands and, further, that the Crow Tribe not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described; and

WHEREAS, according to the oral history of the Crow Tribe the traditional territory of the Crow Nation extended all areas within the four teepee poles: to wit, the North Pole at the Bear's Paw Mountains in northern Montana, the West Pole at the Absaroka and Bear's Tooth Mountains in-south-central Montana, the South Pole at the Wind River Range of central Wyoming, and the East Pole at the Black Hills of western South Dakota and northeastern Wyoming; and

WHEREAS, upon agreeing to reside on a reservation which reduced the size of their homeland to approximately eight million acres, the leaders of the Crow Tribe secured the Tribe's right to hunt on all unoccupied lands of the United States through Article IV of the 1868 Fort Laramie Treaty with the United States, which is recorded in the United States session laws at 15 Statutes at Large 649 and provides that the Crow Tribe "shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon;" and

WHEREAS, the United States Congress has never abrogated the aforementioned Crow tribal treaty hunting right; and

WHEREAS, in 1995 the Tenth Circuit Court of Appeals ruled in *Crow Tribe v. Repsis*, also known as the "Ten Bear Decision" that the Crow treaty right to hunt in

the Bighorn National Forest of Wyoming was abrogated in 1890 by virtue of Congressional passage of the Wyoming statehood act, but in 1999 the United States Supreme Court in *Minnesota v. Mille Lacs Band of Chippewa* reversed the case law which the Tenth Circuit based its decision on in *Repsis;* and

WHEREAS, William Canby, distinguished Senior Judge for the United States Court of Appeals for the Ninth Circuit and author of *Indian Law in a Nutshell* has written that the rule set forth in the Tenth Circuit's *Repsis* decision cannot be relied upon because it was "squarely rejected" by the *Mille Lacs* decision; and

WHEREAS, the State of Montana currently recognizes the Shoshone-Bannock as having an off-reservation treaty right to hunt under the 1868 Fort Bridger Treaty, which contains the same language as the 1868 Fort Laramie Treaty as it pertains to hunting and the State of Montana also recognizes off-reservation treaty hunting rights held by the Salish-Kootenai, Nez Perce, and Warm Springs Umatilla, including in areas that were recognized as Crow Country under the 1851 Fo:1 Laramie Treaty and were part of the Crow Indian Reservation until 1882; and

WHEREAS, the time has come for the Crow Tribe to fully exercise its hunting rights guaranteed by past tribal leaders through the treaties with the United States.

Appendix A

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE EXECUTIVE BRANCH AND LEGISLATURE IN SPECIAL SESSION:

Section 1. Establishment of Tribal Policy. The policy of the Crow Tribe shall be to exercise fully its treaty right to hunt on all unoccupied lands of the United States which are located within the traditional Crow homeland, as set out in the 1851 Fort Laramie Treaty, along with all such lands as located in traditional Crow territory according to tribal oral history.

(a) It shall be tribal policy to consider the term "unoccupied lands of the United States" as contained in Article IV of the 1868 Fort Laramie Treaty to include all federal lands managed by the United States Forest Service as national forests and national grasslands, all federal lands managed by the National Park Service as national parks and national recreation areas, all federal lands managed by the United States Fish and Wildlife Service as national wildlife refuges, and all federal lands managed by the Bureau of Land Management as national monuments, national recreation areas, and all such other BLM lands managed for multiple-use or resource preservation, and all federal lands managed by the Army Corps of Engineers and Bureau of Reclamation. All federal lands specifically designated by the United States Congress under statute as off-limits to hunting generally shall be honored as such by the Crow Tribe.

(b) It shall be tribal policy to consider the phrase "so long as game may be found thereon" as contained in

Appendix A

Article IV of the 1868 Fort Laramie Treaty to include all native species of animals found in the traditional Crow homeland as identified in the 1851 Fort Laramie Treaty. Such species shall include but not be limited to: buffalo, elk, mule deer, white-tailed deer, black bear, grizzly bear, big horn sheep, shiras moose, grey wolves, pronghorn antelope, mountain lion, bobcat, wolverine, badger, beaver, sharp-tailed grouse, ruffed grouse, sage grouse, blue or dusky grouse, prairie chicken, wild turkey, waterfowl, birds of prey, and all fur-bearing animals.

(c) The Crow Tribe intends to enact regulations governing the exercise of all off-reservation treaty hunting conducted by Crow tribal members through an amendment to the Crow Fish and Game Code as contained in Title 12 of the Crow Law and Order Code. Such regulations shall, at a minimum, include procedures for issuance of treaty licenses, the establislunent of treaty-hunting seasons, harvest quotas, enforcement procedures including penalties for violations, inter-governmental agreements including cooperative habitat improvement projects, and other conservation-based regulatory measures.

(d) Enrolled members of the Crow Tribe, pursuant to the Fort Laramie Treaties of 1851 and 1868, may take native species of animals, including but not limited to the aforementioned list in Section 1(b), permitted to be taken under Crow tribal law. All animal species federally-listed as endangered or threatened under the Endangered Species Act and all animal species otherwise specifically protected from hunting under federal statutory law shall be honored as protected by the Crow Tribe. Enrolled

members engaged in treaty-hunting shall at all times have a current tribal identification card in their possession. It shall be unlawful for any non-member to accompany a tribal member engaged in off-reservation treaty hunting.

Section 2. Notice to Federal Government. Upon the effective date, a certified copy of this Tribal Resolution shall be immediately provided to the following local and regional federal offices: the United States Attorney for the District of Montana in Billings, the United States Attorney for the District of Wyoming in Cheyenne, the Forest Supervisor for the Bighorn National Forest in Sheridan, the Forest Supervisor for the Custer National Forest in Billings, the Forest Supervisor for the Gallatin National Forest in Bozeman, the Forest Supervisor for the Shoshone National Forest in Cody, the Forest Supervisor for the Lewis and Clark National Forest in Great Falls, the Forest Supervisor for the Black Hills National Forest in Custer, South Dakota, the Superintendent for Yellowstone National Park in Wyoming, the Superintendent for Big Horn Canyon National Recreation Area in Fort Smith, the Director of the Montana-Dakotas State Office of the Bureau of Land Management in Billings, the Director of the Wyoming State Office of the Bureau of Land Management in Cheyenne, and the Mountain-Prairie Regional Director of the Fish and Wildlife Service in Denver. Furthermore, a certified copy of this Tribal Resolution shall be immediately provided to the President of the United States Barack Obama, United States Attorney General Eric Holder, Secretary of the Interior Sally Jewell, and Secretary of the Department of Agriculture Tom Vilsack.

Appendix A

Section 3. Notice to Montana state government. Upon the effective date, a certified copy of this Tribal Resolution shall be immediately provided to the following Montana state government offices: the Office of the Governor, the Attorney General's Office, and the Director of Department of Fish, Wildlife, and Parks in Helena.

Section 4. Notice to Wyoming state government. Upon the effective date, a certified copy of this Tribal Resolution shall be immediately provided to the following Wyoming state government offices: the Office of the Governor, the Attorney General's Office, and the Director of Department of Game and Fish in Cheyenne.

Section 5. Notice to South Dakota state government. Upon the effective date, a certified copy of this Tribal Resolution shall be immediately provided to the following South Dakota state government offices: the Office of the Governor, the Attorney General's Office, and the Director of Department of Game, Fish and Parks in Pierre.

Section 6. Executive Branch to Negotiate. The Executive Branch is authorized to negotiate with any and all federal and state governmental authorities regarding any terms or conditions the Legislature should consider in the adoption of treaty hunting regulations in the Tribal Fish and ~~Game Code~~.

Section 7. Tribal Resolution Not a Limitation of Rights. Nothing contained in this Tribal Resolution shall be considered a limitation on any Crow tribal rights to hunt, fish, or gather pursuant to the 1868 Fort Laramie Treaty or other law.

Section 8. Effective Date. This Act shall become effective immediately upon becoming duly adopted by the Legislature and approved by the Executive Branch Chairman.

APPENDIX B — CROW RESERVATION FISH & GAME CODE, 2005, CROW LAW AND ORDER CODE, TITLE 12 (FROM *WYOMING V. HERRERA*, RECORD ON APPEAL, CT 2014-2687; 2688) (SELECTED EXCERPTS)

TITLE 12

FISH AND GAME CODE

[TABLES INTENTIONALLY OMITTED]

CHAPTER 1 POLICY

12-1-101. *Policy.* It is the policy of the Crow Tribal Council to exercise the inherent sovereignty of the Crow Indian Nation over all land and waters within the exterior boundaries of the Crow Indian Reservation. Henceforth all hunting and fishing within the exterior boundaries will be regulated by the Tribal Council through the Crow Tribal Fish & Game Commission as set forth in this title. Any previous resolution of the Tribal Council to the contrary is hereby rescinded.

12-1-102. *Jurisdiction.* - (1) This code shall govern activities including but not limited to hunting, fishing, trapping, gathering, and recreation. The natural resources affected by these activities belong to the Crow Tribe.

* * *

(39) "WATERFOWL" includes but is not limited to all varieties of Geese, Brant, Swans, Ducks, Rails, coots, and Wilson Snipes.

Appendix B

(40) "WILDLIFE" means any and all forms of birds and mammals including their nest or eggs.

CHAPTER 3 CONSERVATION

12-3-101. *Policy.* It shall be and is hereby established as the policy and intent of the Crow Tribal Fish and Game Commission, as established by the Crow Tribal Council, to provide an adequate and flexible system for the protection and conservation of all forests (whenever they are designated as wildlife habitat), fish and game resources within the Crow Indian Reservation; to provide for the general management and supervision of all wildlife, fishery, and outdoor recreational activities on the Crow Indian Reservation, including but not limited to, the establishment of rules, regulations and ordinances relating to the harvest of Fish and Game on the Crow Indian Reservation, the establishment of prohibited acts and penalties in regard to wildlife, fishery, and outdoor recreational activities on the Crow Indian Reservation.

12-3-102 *Conservation Fund.* (1) The conservation fund shall consist of all monies received from the sale of licenses and permits, the penalties collected by the conservation court, monies received from the sale of confiscated property, donations, and other funds appropriated by the Crow Tribal Council or any other entity for conservation purposes. The custodian of the conservation fund shall make periodic financial report to the Crow Tribal Fish and Game Commission, and shall not disburse monies from the Conservation Fund without a recommendation as provided for herein.

(2) The Crow Tribal Fish & Game Commission shall advise or recommend to the Crow Tribal Council disbursements and expenditures from the conservation fund, provided that in no case shall funds be expended or disbursed for purposes which are not reasonable and necessary to the implementation or operation of the activities governed by this code.

12-3-102 *Crow Tribal Court.*
The Crow Tribal Court shall have jurisdiction over all violations of the Fish and Game Code.

CHAPTER 4 NON-MEMBER LICENSING

12-4-101 *Non-members; Basic Recreation License; Hunting and Fishing Permits.*
The Basic Recreation License is prerequisite to all hunting and fishing permits. The holder of a current Recreation License may engage in recreation activities within the exterior boundaries of the Reservation pursuant to the terms and conditions contained in these regulations.

(1) Fishing Permit: To lawfully fish in a Reservation water body, non-members must possess a valid Recreation License to which is permanently affixed a fishing permit.

(2) Hunting Permit: To lawfully take or hunt Big Game, Small Game, Fur-Bearers, migratory waterfowl, and upland game birds, a non-member must possess a valid Recreation License to which is permanently affixed a hunting permit appropriate to the category of game hunted or trapped.

Appendix B

(3) Trapping Permit: To lawfully trap fur bearers of small game mammals, a non-member must possess a valid Recreation License to which is permanently affixed a trapping permit.

(4) Waterfowl Permit: To lawfully hunt or take migratory waterfowl within the exterior boundaries of the Reservation, a non-member must possess a valid Recreation License to which is permanently affixed a Tribal Waterfowl Permit and Federal Migratory Bird Stamp.

(5) Upland Game Permit: To lawfully hunt or take upland game bird within the exterior boundaries of the Reservation, a person must possess a valid Recreation License to which is permanently affixed a Upland Game Bird Permit.

12-4-102 *Obtaining, validating licenses/permits–non-members.* Permits and licenses can be obtained only through Crow Tribal Fish and Game Commission office during regular hours (Monday - Friday, 8:00 a.m. to 5:00 p.m.) or through any sellers authorized by the Fish and Game Commission.

(1) Only one permit per regulated activity may be obtained by an individual.

* * * *